

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: Original
POSITION: Oppose

BILL NUMBER: AB 744
AUTHOR: J. Perez

BILL SUMMARY: Office of Intellectual Property

This bill would create the Office of Intellectual Property (OIP) in the Business, Transportation and Housing Agency (BTH) for purposes of tracking and providing guidance to state agencies for intellectual property (IP) created by the state and through state-funded research.

FISCAL SUMMARY

BTH staff estimates that this bill would require 9 positions and \$1.2 million in ongoing General Fund costs, with \$250,000 in one-time General Fund costs to establish the data base. While BTH would have some costs, this estimate appears high. The actual workload and costs would be determined during the normal budget process.

COMMENTS

Finance is opposed to this bill because it would generate significant General Fund costs when the state has a structural imbalance between revenues and expenditures. Although the state may have an interest in leveraging IP developed with state funds, it is not evident that the benefits of establishing a centralized state office to pursue this goal would outweigh the significant costs involved. Additionally, this bill does not give the OIP authority to compel state departments and grantees to provide information nor follow guidelines set by the OIP on IP matters. This could make the operations of the OIP ineffective in tracking and facilitating best practices for IP.

Analyst/Principal (0741) P. Abahazi	Date	Program Budget Manager Mark Hill	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS	Form DF-43 (Rev 03/95 Buff)
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ANALYSIS**A. Programmatic Analysis**

Existing law permits various state agencies to enter into contracts and agreements, create liabilities, and develop, own and control the use of intellectual property (IP) developed by the state.

This bill would create the Office of Intellectual Property (OIP) within the Business, Transportation and Housing Agency (BTH) for purposes of tracking and providing management guidance to state agencies for IP created by the state and through state-funded research. Specifically, this bill would require the OIP to:

- Develop an IP database which would track IP by category, creation date, funding source, granting agency, and other related information.
- Develop a sample maintenance plan for an inventory of IP.
- Develop factors to consider when deciding to sell or license IP to others.
- Develop an outreach campaign informing state agencies of their rights and abilities concerning IP.
- Develop sample invention assignment agreements that state agencies can consider to secure rights to patentable items created by their employees.
- Develop sample language for licenses or terms-of-use agreements that state agencies can use.

Discussion:

According to a November 2000, California Bureau of State Audits (BSA) report, many state agencies are not sufficiently knowledgeable about the IP they own to act against individuals and entities that use the state's IP inappropriately, including profiting from products developed at state expense and claiming patent rights to state developed inventions. The BSA report recommended the Legislature designate a state agency to lead the development of overall policies and guidelines related to state-owned IP. A report requested by the Legislature, released in January 2006 by the California Council on Science and Technology (CCST), made a similar recommendation. The author's office indicates that this bill is intended to ensure that the state is able to track IP generated with support of state funds so that the state can ensure that it receives a fair return on investments.

The California Performance Review (CPR) examined the IP-related topic of infrastructure research programs at various state agencies, including the Department of Transportation (Caltrans), California Energy Commission, Integrated Waste Management Board, Seismic Safety Commission and the Water Resources Control Board. The CPR estimated that the state spends more than \$150 million annually on research and development (R&D) to find solutions to infrastructure problems, but concluded that state R&D programs were fragmented and uncoordinated. The CPR also determined that the state lacked a standardized and coordinated system to commercialize research results, and recommended creation of a state Office of Infrastructure Research and Development within BTH to help market IP.

Finance acknowledges there may be benefits to leveraging state funded IP, but the costs and benefits involved in creating a new state office to address this issue have not been quantified. Additionally, this bill does not give the OIP authority to compel state departments and grantees to provide

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information nor follow guidelines set by the OIP on intellectual property matters. This could make the operations of the OIP ineffective in tracking and facilitating best practices for IP.

According to the author's office, "there is no clear accounting of what IP the state owns or the types of agreements state agencies have entered into. Three reports on the issue have expressed the need to establish a centralized IP tracking system. This disjointed system ultimately costs the state more money. As technology continues to advance, state agencies without sufficient knowledge of how to protect IP will become increasingly vulnerable to unauthorized use and inability to capitalize on reduced contracts costs or increasing revenue to the state".

Prior Legislation:

AB 1456 (Mullin, 2007) was the most recent bill that proposed creation of the OIP for purposes of identifying and providing policy guidance for state agency management of IP developed by state employees or with state funds. The bill was held in Senate appropriations, and later amended to an unrelated subject.

B. Fiscal Analysis

BTH estimates that this bill would require 9 positions (3 Staff Counsels, a Staff Services Manager, 3 Associate Governmental Program Analysts, an Executive Assistant and an Office Technician) and \$1.2 million in ongoing General Fund costs. This bill requires BTH to draft model intellectual property terms of use, which will require attorneys with this subject matter expertise. This bill would also require \$250,000 General Fund in one-time costs to create an IP database.

While BTH would have some costs, this estimate appears high. The actual workload and costs would be determined during the normal budget process.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							
	LA	(Dollars in Thousands)							
	CO	PROP							Fund
	RV	98	FC	2010-2011	FC	2011-2012	FC	2012-2013	Code
0520/Secty BT&H	SO	No	C	\$1,450	C	\$1,200	C	\$1,200	0001